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S. H. Bennion v. Gulf Oil Corporation, A Pennsylvania Corporation and the Utah State Board of Oil, Gas And Mining, An Agency of the State of Utah : Petition For Rehearing Of Respondent Gulf Oil Corporation

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IN THE SUPREME COURT
OF THE STATE OF UTAH

S. H. BENNION, Plaintiff and Appellant, v. GULF OIL CORPORATION, a Pennsylvania corporation and the UTAH STATE BOARD OF OIL, GAS AND MINING, an Agency of the State of Utah, Defendants and Respondents.	* * * * * * * * * * * * * *	Case No. 19144

PETITION FOR REHEARING OF RESPONDENT GULF OIL CORPORATION

Appeal From a Judgment of the Third Judicial
District Court in and for Salt Lake County
The Honorable Timothy R. Hanson

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IN THE SUPREME COURT
OF THE STATE OF UTAH

[illegible],

Plaintiff and
Appellant,

v.

GULF OIL CORPORATION, a
Pennsylvania corporation and
the UTAH STATE BOARD OF OIL,
GAS AND MINING, an Agency of
the State of Utah,

Defendants and
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Pursuant to Rule 35, Utah Rules of Appellate Procedure, Respondent Gulf Oil Corporation (hereafter "Gulf") respectfully petitions the court for a rehearing and states with particularity the following facts and law which the court has overlooked or misapplied:

POINT I: THE COURT HAS OVERLOOKED AND MISAPPLIED THE BASIC FACTS AND TESTIMONY AVAILABLE TO SUBSTANTIATE THE ORDERS IN CAUSE NOS. 139-20 AND 139-20(B), AND HAS THEREFORE FAILED TO PERCEIVE THE BOARD'S PLAN OF DEVELOPMENT FOR THE ALTAMONT FIELD (U.C.A. SECTION 40-6-6(d)); FURTHER, IT HAS SUBSTITUTED ITS OWN VERSION OF FACTS FOR THOSE OF THE BOARD, IN VIOLATION OF THE COURT'S OWN ESTABLISHED STANDARD OF REVIEW.

POINT II: RELIEVING MR. BENNION OF RESPONSIBILITY FOR COSTS FOR A NECESSARY INFILL DEVELOPMENT WELL GRANTS HIM A WINDFALL AND AN UNJUST ENRICHMENT, IN CONTRADICTION TO THE INTENT BEHIND U.C.A. §40-6-6(g) and (h).

POINT III: MR. BENNION'S CORRELATIVE RIGHTS HAVE NOT BEEN TRAMPLED UPON; RATHER, THEY HAVE BEEN SCRUPULOUSLY PROTECTED BY THE PLAN OF DEVELOPMENT INSTITUTED BY THE BOARD UNDER THE MANDATE OF U.C.A.§40-6-6(d).

STATEMENT OF THE CASE

On October 22, 1981, the Utah Board of Oil, Gas and Mining (hereafter the "Board") entered its Order in Cause No. 139-20(B), which Order designated the Albert Smith No. 2-8C5 well (hereafter the Albert Smith No. 2 well) the production well for the drilling/spacing unit comprised of Section 8, Township 3 South, Range 5 West, U.S.M., Duchesne County, Utah. The Albert Smith No. 2 well was an experimental infill well, approved in Cause No. 139-20, and was the second well drilled in the unit. The Order further required that the Albert Smith No. 1-8C5 (Albert Smith No. 1) well, the first well drilled in the section be shut in until further notice.[1] Mr. Sam H. Bennion (appellant herein), owner of a 0.53% mineral interest in Section 8, appealed the Order in Cause No. 139-20(B). This Court vacated the Order of the Board (Cause No. 139-20(B)), instructed the Board to enter an order to the effect that the Albert Smith No. 2 well is and has been producing in violation of Utah law, and relieved Bennion of all obligation to share in the cost of drilling the second well. (Slip op. at 4). The reasons given by the court for its opinion are: 1) lack of statutory authority to allow a "test" well to displace a "production" well; and 2) insufficient evidence to support the Board's decision. (Slip op. at 2-4).

ARGUMENT

POINT I: THE COURT HAS OVERLOOKED AND MISAPPLIED THE BASIC FACTS AND TESTIMONY AVAILABLE TO SUBSTANTIATE THE ORDERS IN CAUSE NOS. 139-20 AND 139-20(B), AND HAS THEREFORE FAILED TO PERCEIVE THE BOARD'S PLAN OF DEVELOPMENT FOR THE ALTAMONT FIELD (U.C.A. SECTION 40-6-6(d)); FURTHER, IT HAS SUBSTITUTED ITS OWN VERSION OF FACTS FOR THOSE OF THE BOARD, IN VIOLATION OF THE COURT'S OWN ESTABLISHED STANDARD OF REVIEW.

The Albert Smith No. 2 was one of approximately eighty other infill wells approved for the Altamont Field. The

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[1] By statute, only one production well was allowed per unit. U.C.A. §40-6-6(c), (1953 as amended)

authorization procedure, (from initial approval pursuant to long standing practice, to final well designation after a production test period) is set forth in Cause Nos. 139-20 and 139-20(B) (attached). Both Orders must be read in conjunction to understand the nature of the plan.

Gulf respectfully submits that the court has overlooked the Board's determination of basic facts in Cause No. 139-20 which are relevant to the Albert Smith No. 2 well and has therefore failed to perceive the Board's plan of additional well authorization for the Altamont Field.

A. BASIC FINDINGS OF THE BOARD RELEVANT TO THE ALTAMONT FIELD GENERALLY

In Cause No. 139-20 the Board made the following findings concerning the Altamont Field as a whole (Order, pages 3 -4):

1) "State and Federal regulatory authorities, as well as . . . individuals . . . have been aware of the fact that application of [presently known] drilling techniques under the current spacing pattern will result in only a 9% recovery of the oil in place. . . .

2) "[C]onsistent with the mandate . . . to promote greater ultimate recovery of [oil] as long as there exists a possibility for recovery of a greater portion of the 90% of the oil in place . . . it is the policy of the Board that every effort should be made to maximize recovery . . . .

3) "To promote the greatest possible recovery of oil and gas . . . the Board and Division have permitted numerous

experiments, [including] the drilling of test wells within [a] 640 acre unit to determine whether the Board's 640 acre spacing of this field was draining the area in the most effective manner."

To fully understand the meaning of these findings, one must examine and understand the history of the Altamont Field.

B. ALTAMONT FIELD

The initial exploration of the Green River - Wasatch formation underlying the Altamont Field occured in the 1960's. As a result of the initial activity, the Board established 640 acre drilling/spacing units in Cause No. 139-8, dated September 20, 1972 (attached). The purpose of the spacing was to ensure that further initial exploration occured in an orderly fashion, without waste or unnecessary wells.

In the ensuing years, various operators, including respondent Gulf, proceeded to complete the initial exploration by drilling one well each on specifically selected 640 acre spacing units. The spatial pattern of these wells circumscribed the general geographic boundaries of the field. The wells themselves, in due course, revealed important aspects of the geology and production characteristics of the Green River - Wasatch formation, a geology that proved to be singularly unique.

As was demonstrated to this honorable Court (oral argument), production from the Green River - Wasatch formations underlying the spaced units comprising the Altamont Field is governed by vertical fracturing. Absent this fracturing system the formation would lack the requisite permeability for production of oil and gas in the Altamont Field. The unique geology of the field made pre-drilling estimates of the drainage of a particular well quite unreliable. The operator had no reccourse but to produce a well until it approached its economic limit, which limit thereby established the total amount of production from the well. From these factual total amounts, the operators could finally infer the probable drainage of the well. When the results were in, the operators realized many of the wells were not draining all the reserves believed to underlie each spacing unit, because of the peculiar geology of the formation and the limits imposed by the fracturing system. If a well cannot drain all the reserves, it follows that some portions of the reservoir are not accessed by the well. Naturally, if an existing well cannot produce these reserves, such reserves are, by definition, unrecoverable and wasted.

C. FINDINGS OF FACT AND TESTIMONY CONCERNING THE NEED FOR THE ALBERT SMITH NO. 2 - 8C5 WELL

Therefore, as each initial well approached its economic limit, and such limit defined its drainage as less than 640 acres, an additional well was proposed to recover the unreachable reserves. This was the case with Section 8 and the Albert Smith No. 1 well. In Cause No. 139-20 the Board found: "[I]t is postulated that due to the fact that the present Albert Smith No. 1-8C5 well is not highly productive, . . . a new infield well may drain the 640 acre tract more effectively and recover sufficient additional oil to be an economic well." (Order, page 4)

The Board believed it should authorize additional wells, if necessary for a particular drilling unit (see findings noted on page 4, supra.), and had the authority to do so.[2]

A key issue for both Gulf and the Board to consider was the disposition of the No. 1 well, which was still producing, though already at its economic limit.

D. THE BOARD'S PLAN OF DEVELOPMENT

The Board had, over the years, devised a plan of development which responded fairly and equitably to the concerns of the operators and interest owners, and still recognized the unique geology of the field. The plan, as applied to Section 8, allowed Gulf to drill an additional experimental well and to test the well for a short period of time.[3] The purpose of this procedure was to determine if the test well had encountered additional reserves producible through the fracturing system. The key datum, which

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[2] Authority was vested pursuant to U.C.A. §40-6-6(d) (1953, as amended). See Order, Cause No. 139-20, page 5.

[3] The Board found in Cause No. 139-20 that the Albert Smith No. 2 well was not being drilled in violation of the Board's Order in Cause No. 139-8 as said well was presently only an experimental well and was not to be produced without subsequent order of the Board. (Order, page 6).

was the goal of the test, and which would resolve the issue, was the initial production data from the new well.

Therefore, the first step in the Board's plan was, on a unit by unit basis, to determine if an additional well was necessary to recover additional reserves. If so, the second step of the plan was to determine whether it was more equitable to produce the second well or the first, and if the second was to be produced, the disposition of the first well.[4] The key factor in the second step designation hearing is the proffer of the initial production data from the test period. Gulf submits that the Board's plan was manifestly within the mandate of the statute authorizing it "to permit the drilling of additional wells on a reasonably uniform plan in the pool, or any zone thereof." U.C.A. §40-6-6(d). The plan had been in effect since the initial spacing order.

E. THE HEARING ON THE DESIGNATION OF WELL STATUS - CAUSE NO. 139-20(B)

Gulf followed the plan developed by the Board. The Albert Smith No. 2 Well was drilled and produced simultaneously with the

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[4] In Cause No. 139-20, the Board found that the Board could, after proper notice and hearing, designate the No. 2 well as the production well for the unit and shut in the No. 1 well, if the evidence so required, or the No. 2 well could be designated the producing well "in a drilling unit of decreased size from that ordered in Cause No. 139-8." (Order, page 7). Note that the Board retained the option of ordering either available method of second well authorization, downspacing or infill. (U.C.A. §40-6-6(d)).

Albert Smith No. 1 well in January, [illegible] 1981. Gulf presented the results of [illegible] testing [illegible] at the hearing on April 30, 1981 [illegible] the Albert Smith No. 1 produced 1,[illegible] barrels of oil, [illegible] and 20,343 barrels of water during [illegible] days of operation, [illegible] average of 23.[illegible]4 barrels of oil per day. The Albert [illegible] produced 24,677 barrels of oil, 3[illegible],222 MCF of gas, and [illegible] barrels of water during 77 days of operation, for an average of [illegible] barrels of oil per day. Gulf's expert witness, Mr. [illegible], testified that the Albert Smith No. 2 Well "produced [illegible] barrels of oil and zero barrels of water and 656 mcf of gas on a 1[illegible] choke, tubing pressure 1,30[illegible] psi" for a 24 hour test [illegible], 1981. (R.196.) He, (Mr. Anthony) also testified that at the time the Albert Smith No. 1 Well was shut in (on March [illegible], 1[illegible]) it was producing from 13 to 20 barrels of oil and 2[illegible] barrels of water per day. (R.197.) It is important to note that the [illegible] lifting and then disposing of this large volume of water [illegible] to the determination that the well had reached its [illegible].

In concluding that "the [illegible] demonstrate that it was more suitable or [illegible] first well and redesignate the second well [illegible]" this honorable Court observed that [illegible]:

> Gulf did not [illegible] commercial well or [illegible] would exceed that [illegible] by the first well. [illegible] testified:

> [illegible] idea of what the extent
> [illegible] is. We can't know
> [illegible] time. We realize that this
> [illegible] -- apparently the reservoir
> [illegible] geological structure of the
> [illegible] -- it's almost impossible to
> [illegible] going to happen from one
> [illegible] for as correlating sands
> [illegible].
> [illegible] Anthony, T.[illegible]

[illegible] that this testimony of Mr. [illegible] attributed to the Albert Smith No. 2 [illegible]. [illegible] reveals that Mr. Anthony was [illegible] No. 2 well. (T.187-204). He was [illegible] No. 2 well. Mr. Anthony did not [illegible] No. 2 well would be a commercial [illegible] completed and had not yet been through [illegible]. Mr. Anthony's statement was not [illegible] No. 2 well because the necessary [illegible] and the Board was fully cognizant of the [illegible] No. 2.

[illegible]

[illegible] that questions of basic fact [illegible] will be accorded the greatest [illegible] review. _Utah Department of [illegible] Public Service Commission_, 658 P.2d 601, [illegible] fact will be affirmed if they are "[illegible]". The Court will drilling the No. 1 well until it was proven to be economically feasible and designated as the production well for the unit.

Finally, Gulf submits that subsection (c) of U.C.A. [illegible], must be read in its full connotation. It is not enough to read it in the rigorously restricted sense adopted by this Honorable Court; the complimentary, modifying language of the subsection must be considered. Thus, with emphasis supplied, the subsection reads:

> Subject to the provisions of this act, the order establishing drilling units shall direct that no more than one well shall be drilled _for production_ from the common source of supply on any unit.

The Board complied in every detail with this mandate; not more than one well was drilled in Section 9 "for production from the common source of supply . . . ."

POINTS II AND III:

POINT II: RELIEVING MR. BENNION OF RESPONSIBILITY FOR COSTS FOR A NECESSARY INFILL DEVELOPMENT WELL GRANTS HIM A WINDFALL AND AN UNJUST ENRICHMENT, IN CONTRADICTION TO THE INTENT BEHIND U.C.A. 40-6-6(c) and (h).

POINT III: MR. BENNION'S CORRELATIVE RIGHTS HAVE NOT BEEN TRAMPLED UPON; RATHER, THEY HAVE BEEN CORRELATIVELY PROTECTED BY THE PLAN OF DEVELOPMENT INSTITUTED BY THE BOARD UNDER THE MANDATE OF U.C.A. 40-6-6(d).

A. [illegible] IN THE ALBERT SMITH NO. 1 WELL [illegible] OF CORRELATIVE RIGHTS.

Mr. Bennion was a non-consenting mineral interest owner[5] [illegible] to the Albert Smith No. 1 well. As such, he neither

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[5] [illegible] U.C.A. [illegible] and [illegible], (1953, as amended).

leased his interest to Gulf (or any other company or individual that was interested in exploring the section), nor did he agree to become a consenting "partner" or joint venture participant in the prospect. He simply did nothing. Because of this, Gulf carried Mr. Bennion's interest, i.e. Gulf advanced for Mr. Bennion's account that portion of drilling and completing costs attributable to his ownership percentage.[6] Once the well was completed at Gulf's expense, Mr. Bennion's rights to a portion of production from the well were determined by Utah law.[7] Under the law, Mr. Bennion, as a mineral interest owner, was entitled to a cost free royalty of 12.5% of the production attributable to his proportion of interest. See <u>Bennion v. Utah Board of Oil, Gas and Mining</u>, 675 P.2d 1135, 1141 (Utah, 1983). The other 87.5% of the production attributable to Mr. Bennion's portion of ownership (commonly referred to as the working interest) was credited to Gulf as reimbursement for the costs it carried on his behalf. It is important to note that Gulf could keep 87.5% of Mr. Bennion's portion of <u>production</u> only. If the well did not produce, Gulf could not seek reimbursement from Bennion. Therefore, if the well was dry or played out before payout (the point at which, by definition, all costs are recovered), Gulf

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[6] In 8 <u>Williams and Meyers</u>, Manual of Terms, carried interest is defined as: "A fractional interest . . . the holder of which has no personal obligation for operating costs, which are to be paid by the owner or owners of the remaining fraction, who reimburse themselves . . . out of production, <u>if any</u>." (Emphasis added)

[7] <u>U.C.A.</u> §40-6-6(a) and (b), (1953 as amended).

would not have recovered all carried costs. All of the risk and expense was Gulf's - not Bennion's. After payout, Mr. Bennion's working interest was returned to him and merged with his royalty interest. He subsequently owned 100% of the production attributable to his share in the No. 1 well, subject to his portion of the ongoing production costs. Note that at no time in this procedure was Mr. Bennion required to pay Gulf any money out of his pocket. He took no monetary risk whatsoever. His is the safest and best of all possible worlds. Never have his correlative rights been trampled upon.

B. CARRIED INTERESTS WITH RESPECT TO THE ADDITIONAL UNIT WELL

Gulf proposed a second unit well to recover otherwise unrecoverable reserves in the unit. The present dispute arose over financing of the second well. Mr. Bennion asserts he is required to pay for only one well per unit. (Brief of Appellant, page 11). Gulf submits that if the second well is necessary to recover additional reserves, then it is fair and equitable to require all parties to pay their fair share of costs. The key issue is the need for the well.

Gulf, as operator, was willing to take the risk that the second well would recover new, additional oil. Mr. Bennion was not. To protect his rights as a non-consenting owner, the Board specifically ordered that he was not to be charged with any costs of the second well until such time as it was designated the producing well, after notice and hearing.[8]

Mr. Bennion argues that it is unfair to deprive him of his 100% share in the first well, which is no longer in production, and give him only a 12.5% share in the second, which is capable of commerical production. Mr. Bennion owns a .53% interest in Section 8. The evidence adduced (production records attached) shows that the Albert Smith No. 1 Well produced 1,600 barrels of oil, and 20,343 barrels of water for 67 days in early 1981. At an assumed price of $30 a barrel (not uncommon in those days) Mr. Bennion's 100% share of his portion of production from No. 1 comes to approximately $4.00 per day of operation, less his portion of the substantial cost of lifting and disposing of 20,000 barrels of water during this production period. During its test period of 77 days, the Albert Smith No. 2 Well produced 24,677 barrels of oil and 917 barrels of water. At $30 a barrel, Mr. Bennion's 12.5% share of his portion comes to $6.50 per day of operation, with minimal water disposal costs. Mr. Bennion is deprived of no income. In fact he has gained. The position Mr. Bennion argues is one vast contradiction.

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[8] In Cause No. 139-20, the Board found that since the Albert Smith No. 2 well "is a test well and not a production well, the Plaintiff non-consenting owner is not required to pay any of the costs of drilling such well at this time, whether [it] is a dry hole or a producing hole operating during the 60-day test period . . . . [A]fter notice and hearing . . . designating the [well] as a producing well (for an intact unit or unit of decreased size), the plaintiff . . . will be required to pay . . . for his proportionate share of costs . . . ." (Order, page 7).

C. CONCLUSION OF POINTS II AND III:

Mr. Bennion's correlative rights to production from the second well are governed by and protected by the very same statutes as his rights to production from the first well. Further, the Board has scrupulously protected his rights at all times during the authorization process, charging him for his fair share of costs only after the well was proven to be economically worthwhile. If the second well was dry or played out before payout, Gulf would never recover the carried costs. Once again, Mr. Bennion takes no risk whatsoever. Gulf respectfully submits that to allow Mr. Bennion to take his portion of production from a necessary infill well without paying his share of costs is to grant him a windfall and unjust enrichment, in contradiction to the intent behind the Utah non-consent statute.

STATEMENT OF RELIEF SOUGHT

Gulf Oil Corporation respectfully requests a rehearing, so that the above issues may be more fully developed, and the plan of infill developmnt authorized by the Board be affirmed.

RESPECTFULLY SUBMITTED this 10th day of September, 1985.

HUGH C. GARNER & ASSOCIATES, P.C.

Hugh C Garner

Hugh C. Garner

John A. Harja

John A. Harja
Attorneys for Respondent
Gulf Oil Corporation

CERTIFICATE OF GOOD FAITH AND OF SERVICE

Pursuant to Rule 35(a), Utah Rules of Appellate Procedure, counsel for Respondent Gulf Oil Corporation hereby certifies that the foregoing Petition for Rehearing is presented in good faith in accordance with counsel's understanding of the principles of law and the facts of this case, and not for the purpose of delay.

The undersigned further certifies that on the 10th day of September, 1985, 4 copies of the Petition for Rehearing were mailed, postage prepaid, to Reid Tateoka, Attorney for Plaintiff/Appellant S. H. Bennion, at 1200 Kennecott Building, Salt Lake City, Utah 84133, and 4 copies were hand-delivered to Barbara W. Roberts, Attorney for Defendant/Respondent, Utah Board of Oil, Gas and Mining, at 236 State Capitol Building, Salt Lake City, Utah 84111.

John A. Harja
Attorney for Gulf Oil Corporation

BEFORE THE BOARD OF OIL AND GAS CONSERVATION
DEPARTMENT OF NATURAL RESOURCES
IN AND FOR THE STATE OF UTAH

IN THE MATTER OF THE APPLICATION OF)
SHELL OIL COMPANY FOR AN ORDER EXTENDING)
PRIOR ORDERS OF THE BOARD IN CAUSE NO.)
139, AS EXTENDED AND MODIFIED, TO) ORDER
FURTHER DEFINE THE SPACED INTERVAL)
AND TO COVER AND INCLUDE ADDITIONAL) CAUSE NO. 139-8
LANDS IN THE ALTAMONT FIELD, DUCHESNE)
COUNTY, UTAH

Pursuant to Notice of Hearing dated September 1, 1972, of the Board of Oil and Gas Conservation, Department of Natural Resources of the State of Utah, this Cause came on for hearing before said Board at 10:00 o'clock a.m. on Wednesday, September 20, 1972, in the State Office Building Auditorium, First Floor - State Office Building, Salt Lake City, Utah. The following Board members were present:

Delbert M. Draper, Jr., Esq., Chairman, Presiding

Charles R. Henderson

Robert R. Norman

Evart J. Jensen

Also present:

Cleon B. Feight, Esq., Director, Division of Oil and Gas Conservation

Paul W. Burchell, Chief Petroleum Engineer, Division of Oil and Gas Conservation

Gerald Daniels, United States Geological Survey, Salt Lake City, Utah

Paul E. Reimann, Assistant Attorney General

Appearances were made as follows:

For Shell Oil Company:	D. F. Gallion, Esq. Denver, Colorado
	Gregory Williams, Esq. Salt Lake City, Utah
For Chevron Oil Company, Western Division:	William M. Balkovatz, Esq. Denver, Colorado
For Ute Distribution Corporation:	George C. Morris, Esq. Salt Lake City, Utah

NOW, THEREFORE, the Board having considered the testimony adduced, and the exhibits received at said hearing, and being fully advised in the premises, now makes and enters the following:

FINDINGS

1. Due and regular notice of the time, place and purpose of the hearing was given to all interested parties in the form and manner and within the time required by law and the rules and regulations of the Board.

2. The Board has jurisdiction over the matter covered by said Notice and over all parties interested therein and has jurisdiction to make and promulgate the order hereinafter set forth.

3. By Orders entered in Consolidated Causes No. 139-3 and No. 139-4 dated June 24, 1971, and Cause No. 139-5 dated November 17, 1971, the Board established drilling units comprising each governmental section for the production of oil, gas and associated hydrocarbons from the interval described in paragraph No. 7 of said Order in Consolidated Causes No. 139-3 and No. 139-4, common source of supply underlying the lands in the Altamont Area, all as more particularly described in said Consolidated Causes No. 139-3 and No. 139-4, and Cause No. 139-5.

4. Further drilling and development operations and the information and data obtained therefrom, both within and beyond the presently defined boundaries of spaced lands described in said Orders in Consolidated Causes No. 139-3 and No. 139-4, and Cause No. 139-5, subsequent to the dates of said Orders, indicate that the present spaced interval and spaced area as described in said prior Orders should now be further defined and enlarged as follows:

(a) The spaced interval for the common source of supply underlying lands described in paragraph 4(b) below should be defined as:

> The interval from the top of the Lower Green River formation (TGR_3 marker) to the base of the Green River-Wasatch formations (top of Cretaceous), which base is defined as the stratigraphic equivalent of the Dual Induction Log depths of 16,720 feet in the Shell, Ute 1-18B5 well located in the S½NE¼ of Section 18, Township 2 South, Range 5 West, U.S.M., and 16,970 feet in the Shell, Brotherson 1-11B4 well located in the S½NE¼ of Section 11, Township 2 South, Range 4 West, U.S.M.

(b) The lands known and believed to be underlain by the common source of supply from which oil, gas and associated hydrocarbons can be produced from the spaced interval of the Green River-Wasatch formations in Duchesne County, Utah, as hereinabove defined in paragraph 4(a), include the following described lands, which include the lands described in said Consolidated Causes No. 139-3 and No. 139-4, and Cause No. 139-5, to wit:

Township 1 South, Range 3 West, U.S.M.
Sections 3 through 10: All
Sections 15 through 22: All
Sections 27 through 34: All

Township 1 South, Range 4 West, U.S.M.
Sections 1 through 36: All

Township 1 South, Range 5 West, U.S.M.
Sections 10 through 17: All
Sections 20 through 36: All

Township 1 South, Range 6 West, U.S.M.
Sections 25 and 26: All
Sections 35 and 36: All

Township 2 South, Range 3 West, U.S.M.
Sections 3 through 8: All
Sections 17 through 20: All
Sections 29 through 32: All

Township 2 South, Range 4 West, U.S.M.
Sections 1 through 36: All

Township 2 South, Range 5 West, U.S.M.
Sections 1 through 36: All

Township 2 South, Range 6 West, U.S.M.
Sections 1 through 36: All

Township 2 South, Range 7 West, U.S.M.
Section 36: All

Township 3 South, Range 3 West, U.S.M.
Sections 5 through 8: All
Sections 17 through 20: All
Sections 29 through 32: All

Township 3 South, Range 4 West, U.S.M.
Sections 1 through 36: All

Township 3 South, Range 5 West, U.S.M.
Sections 1 through 36: All

Township 3 South, Range 6 West, U.S.M.
Sections 1 through 6: All
Sections 11 through 14: All
Sections 23 through 26: All
Sections 35 and 36: All

Township 3 South, Range 7 West, U.S.M.
Section 1: All

Township 4 South, Range 3 West, U.S.M.
Sections 5 and 6: All

Township 4 South, Range 4 West, U.S.M.
Sections 1 through 6: All

Township 4 South, Range 5 West, U.S.M.
Sections 1 through 6: All

Township 4 South, Range 6 West, U.S.M.
Sections 1 and 2: All

5. One well on a governmental section consisting of 640 acres, more or less, will efficiently and economically drain the recoverable oil, gas and associated hydrocarbons from the aforesaid common source of supply underlying the lands described in paragraph 4(b) above, and that a governmental section drilling unit is not larger than the maximum area that can be efficiently and economically drained by one well.

6. The Orders entered in Consolidated Causes No. 139-3 and No. 139-4, and Cause No. 139-5 provide that the permitted well for each drilling unit shall be located in the center of the NE¼ of the governmental section comprising such drilling unit with a tolerance of 660 feet in any direction; provided that an exception to said tolerance may be granted without a hearing where a topographical exception is deemed necessary. Such provisions in said prior orders should continue to apply provided further that exceptions to such permitted well location and tolerance allowance should be allowed where needed for wells presently drilling or producing oil, gas and associated hydrocarbons from the common source of supply in the Altamont Area.

7. Any and all Orders of the Board heretofore promulgated concerning the Altamont Area, Duchesne County, Utah, which are inconsistent with the Order hereinafter set forth should be vacated upon the effective date of this Order.

ORDER

IT IS THEREFORE ORDERED:

A. That 640 acre drilling units be and the same are hereby established comprising each governmental section, or governmental lots corresponding thereto, for the development and production of oil, gas and associated hydrocarbons from the interval described in paragraph 4(a) above, underlying the lands described in paragraph 4(b) above.

B. That no more than one well shall be drilled on any such unit for the production of oil, gas and associated hydrocarbons from the common source of supply, and that the permitted well for each drilling unit shall be located in the center of the NE¼ of the governmental section comprising such unit, with a tolerance of 660 feet in any direction; provided that an exception to said tolerance may be granted administratively without a hearing where a topographical exception is deemed necessary; and provided that exceptions to the permitted well location and tolerance allowance are hereby allowed where needed for all wells presently drilling or producing oil, gas and associated hydrocarbons from the common source of supply in the Altamont Area, and such exception wells shall be the permitted wells for the drilling units on which they are located.

C. That any and all Orders of the Board heretofore promulgated which are inconsistent with this Order are hereby vacated.

D. That this Order is a temporary order and the Board, on its own motion, or any interested party may file an application requesting a hearing to present new evidence covering the matters set forth herein.

E. That the Board retains continuing jurisdiction of all matters covered by this Order and particularly retains continuing jurisdiction to make further orders as appropriate and authorized by statute and applicable regulations.

ENTERED AND EFFECTIVE THIS 20th day of September, 1972.

BOARD OF OIL AND GAS CONSERVATION
OF THE STATE OF UTAH

Delbert M. Draper, Jr., Chairman

Charles R. Henderson

Robert R. Norman

Evart J. Jensen
Evart J. Jensen

I certify that this is a true and correct copy of the Order issued in Cause No. 139-8.

Marjorie L. Anderson
Secretary of the Board

To promote the greatest possible [illegible] of oil and gas from this region, the Board and Division have permitted numerous experiments, the drilling of test wells within the 640 acre unit to determine whether the [illegible] of this field was draining the area in the most effective manner. For example, Shell Oil Company was permitted to drill two experimental infill wells in the field on the basis of experimental 320 acre spacing. After testing these wells over a period of time, Shell Oil determined that the area was being drained by the original wells and the test wells were uneconomic for that particular area. These test wells have been shut-in to protect the correlative rights of others in compliance with the terms of the experimental permit issued by the Board and Division of Oil, Gas and Mining. In the present case, it is postulated that due to the fact that the present Albert Smith 41-8Z5 well is not highly productive, that a new infield well may drain the 640 acre tract more effectively and recover sufficient additional oil to be an economic well. Therefore, consistent with the mandate of the Board and Division to promote greater ultimate recovery of this resource, as long as there exists a possibility for recovery of a greater portion of the 90% of the oil in place in this field, it is the policy of the Board that every effort should be made by the Board and Division to maximize recovery in this area. However, where such efforts prove unsuccessful, test wells will be shut-in to protect the correlative rights of other interest owners in the field.

E. Specific Authority of the Board and Division to Approve Test Infill Wells.

A. Board Policy.

Consistent with the purposes of [illegible] Conservation Act, [illegible] the Division of Oil, Gas and Mining [illegible] to encourage and in fact, solicit, any action which has a reasonable possibility of increasing recovery from the Greater Altamont Bluebell Field. This policy of the Board was initiated during the 1960's, when the Board, on their own motion, authorized Shell Oil Company upon approval of the Division, to drill test wells in a productive area of the Altamont Field. Since this time the Division has approved tests and drilling activities to maximise recovery in the area. The Division's approval of Gulf's infill test well which is the subject of today's proceeding, was granted consistent with this long established policy in the Bluebell Altamont Field.

B. Statutory Authority.

Pursuant to Section 40-6-6(d).

> ... when found necessary for *the prevention of waste*, or to avoid the drilling of unnecessary wells, or to protect correlative rights, an order establishing drilling units in a pool may be modified by the Board to ... permit the drilling of additional wells on a reasonably uniform plan in the pool, or any zone thereof. (emphasis added)

The approval of infill test wells is an administrative function which has been delegated to the Division of Oil, Gas and Mining, pursuant to Section 40-6-3, U.C.A., 1953, which provides:

> ... the Board of Oil, Gas and Mining shall be the policy-making body of the Division of Oil, Gas and Mining, except as otherwise provided in this act, *whenever reference is made in Title 40, or any other provision of law, to the Oil and Gas Conservation Commission or the Board of Oil and Gas Conservation, it shall be construed as referring to the Board of Oil, Gas and Mining where such reference pertains to policy-making functions*, powers, duties, rights and responsibilites; but *in all other instances such reference shall be construed as referring to the Division of Oil, Gas and Mining*. (Emphasis added, *See* Section 40-6-15, U.C.A., 1953).

In that the approval of infill test wells and other experimental procedures is an administrative function which implements the Board's policy decision to maximise recovery in the Bluebell Altamont Field, it is clear that such activity is within the perview of the Division's authority.

C. Conclusion

In conclusion, the Board finds that the Board and Division have a mandate under Section 40-6-1 of the Oil and Gas Conservation Act to maximise recovery of oil and gas from the Bluebell Altamont Field. Further, the Board finds that the Division was within the scope of its delegated authority to approve the Albert Smith #2-8CS as an infill test well.

II. Should the Albert Smith 2-8CS well be enjoined from operation as being in violation of the Board's Order in Cause No. 139-8?

The Plaintiff has asserted that the Division's approval of and Gulf's drilling of the Albert Smith #2-8CS infill test well should be enjoined as violative of the Board's Order in Cause No. 139-8. This Order established a spacing pattern which enables an operator to drill one well in a 640-acre drilling unit. The Plaintiff maintains that approval and drilling of the second well, Albert Smith #2-8CS, violates Section 40-6-6(c), U.C.A., 1953, which requires that:

> Subject to the provisions of this Act, the Order establishing drilling units shall direct that no more than one well shall be drilled for production from the common source of supply on any unit ... (Emphasis added)

In that the Albert Smith #2-8CS infill test well was approved by the Division as a 60-day test well which was not to be produced simultaneously with the Albert Smith #1-8CS production well after the 60-day test period, it is clear that the second well violates neither the Board Order in Cause No. 139-8 nor Section 40-6-6(c), U.C.A., 1953. The approval letter from the Division dated August 25, 1980, expressly states that

> ... Unless otherwise authorized by the Board of Oil, Gas and Mining, production will be limited to the Albert Smith #1-8CS well after the approved testing period.

Therefore, in that the Albert Smith #2-8CS well is a test well, rather than a production well, the continued operation of that well during the approved test period does not violate the Oil and Gas Conservation Act nor the Board's Order in Cause No. 139-8 and should not be enjoined.

III. Costs of Drilling.

In that the Albert Smith #2-8CS well is a test well and not a production well, the Plaintiff non-consenting owner is not required to pay any of the costs of drilling such well at this time, whether the Gulf test well is a dry hole or a producing hole operating during the 60-day test period.

After proper notice and hearing, the Board could designate the Gulf test well for production if the well substantially improves recovery of oil and gas from the Bluebell Altamont Field. Such a designation could occur as an exception location to the present location to the present spacing pattern, as an order shutting-in the Albert Smith #1-8CS well and designating the Albert Smith #2-8CS well as the producing well for the unit, or as an order designating the test well as the producing well in a drilling unit of decreased size from that ordered in Cause No. 139-8. In any case, after notice and hearing and issuance of a Board Order designating the Albert Smith #2-8CS as a producing well, the plaintiff, as a non-consenting owner will be required to pay Gulf for his proportionate share of the costs of the well under Section 40-6-6, U.C.A., 1953, and implementing rules and regulations. Oil and gas produced during the test period from the Albert Smith #2-8CS well, if any there be, shall offset production costs of the Albert Smith #2-8CS well if said well is designated as a production well.

ORDER

1. The Division of Oil, Gas and Mining was acting within the scope of its authority under the Oil and Gas Conservation Act and Board policy concerning the Bluebell Altamont Field in granting Gulf Oil Company's application for the infield test well Albert Smith #2-8CS.

2. The approval and drilling of the infield test well Albert Smith #2-8CS were not violative of either the Board Order in Cause No. 139-8 nor Section 40-6-6(c), U.C.A., 1953. Therefore, production of said well for the

test period approved by the Division shall not be enjoined.

3. Until such time as the Albert Smith #2-8C5 well is approved by the Board of Oil, Gas and Mining as a producing well, the Plaintiff shall not be charged for production costs. At such time as the Board, after notice and hearing, designates the test well as a production well, the Plaintiff as non-consenting owner, will be required to pay Gulf for his proportionate share of the cost of the well pursuant to applicable laws and regulations governing the allocation of such costs. If the Albert Smith #2-8C5 well is designated as a production well, all oil and gas produced during the test period shall offset the production costs of the well.

4. This Order is issued on an emergency basis pursuant to Section 40-6-8, U.C.A., 1953, and shall remain effective for 15 days from the date of issuance. Notice is hereby given that any objection to this Order must be received Friday, October 17, 1980, as to why the Board should not accept this Emergency Order as a final order at the Board's hearing on October 23, 1980, at 10:00 a.m., in the Wildlife Resources Auditorium, 1596 West North Temple, Salt Lake City, Utah.

SO ORDERED this 3rd day of October, 1980, by the Board of Oil, Gas and Mining.

By Charles R Henderson
Charles R. Henderson
Chairman

I certify that this is a
true and correct copy of the
Order issued in Cause No. 139-20.

Marjorie L. Anderson
Secretary of the Board

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES AND ENERGY
in and for the STATE OF UTAH

- -

IN THE MATTER OF THE APPLICATION)
OF S. H. BENNION AS TO THE PRESENT) AMENDED
STATUS OF THE ALBERT SMITH 2-8C5) ORDER
WELL LOCATED IN SECTION 8,)
TOWNSHIP 3 SOUTH, RANGE 5 WEST,) CAUSE NO. 139-20(B)
U.S.M., DUCHESNE COUNTY, UTAH)

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The Board of Oil, Gas and Mining, State of Utah, conducted a hearing on Thursday, April 30, 1981, at 9:00 a.m., in the Airport Holiday Inn - Executive Conference Room, 1659 West North Temple, Salt Lake City, Utah, in the above entitled matter, at which time the Board entered an Order.

At the time said Order was entered, there was a question as the whether the Board was properly constituted. Therefore, a hearing was held on September 24 and continued until October 22, 1981 to allow a newly constituted Board to reconsider this application.

The following Board Members were present.

Charles R. Henderson, Chairman

Herm Olsen, Presiding Chairman

E. Steele McIntyre

John L. Bell

Margaret R. Bird

Robert R. Norman

Appearances for the parties were made by:

Peter Stirba, Attorney for S. H. Bennion

Hugh C. Garner, Attorney for Gulf Oil Corporation

NOW, THEREFORE, the Board having considered this matter, now makes and enters the following:

FINDINGS

(1) Due and regular notice of the date, place and purpose of the hearing was given to all interested parties as required by law and the rules and regulations.

(2) The Board has jurisdiction over the matter covered by said Notice and over all parties interested therein and has jurisdiction to make and promulgate the Order hereinafter set out.

(3) On September 20, 1972, the Board entered an Order in Cause No. 139-8 spacing the location and drilling of wells on 640 acre units in the Altamont Bluebell Field, Duchesne County, Utah, and requiring "that no more than one well shall be drilled in any such unit for the production of oil, gas and associated hydrocarbons from the common source of supply***".

(4) On August 25, 1980, the Division granted approval to Gulf Oil Corporation to drill the Albert Smith No. 2-8C5 well as an infill test well located within the area spaced under the Order issued in Cause No. 139-8. Said well was approved as a 60-day test drilling well and the Division's letter of approval disallowed simultaneous production of the test well and the Albert Smith No. 1-8C5 well which was then capable of producing oil, beyond the period of testing prescribed by the Division.

(5) The Board finds that the Board and Division have a mandate under Section 40-6-1 of the Oil and Gas Conservation Act to maximise recovery of said resources and to protect correlative rights including those of S. H. Bennion, a non-consent interest owner.

(6) Albert Smith No. 1-8CS well was shut-in on or prior to the end of the prescribed 60-day test period and remains in a shut-in status. Further, the Board finds that said Albert Smith No. 1-8C5 well was, at the time of being shut-in, at the point of marginal recovery of further oil and/or gas.

ORDER

(1) The Albert Smith No. 2-8C5 well is hereby approved as a producing well and the designated well for said spacing unit.

(2) The Albert Smith No. 1-8CS well shall remain shut-in until further Order of the Board.

(3) S. H. Bennion, defined as a non consenting owner, pursuant to his counsel's letter received by this Board September 2, 1980 (Cause No. 139-20) is required to pay Gulf Oil Corporation for his proportionate share of the cost of drilling and completing the Albert Smith No. 2-8C5 well pursuant to the Order of this Board, from and out of production from said well and attributed to his mineral interest ownership.

(4) S. H. Bennion shall be charged, during the testing period of said Albert Smith No. 2-8CS well, for his proportionate share of the production costs.

(5) As the designated production well for said spacing unit, all oil and gas produced, saved and marketed from the Albert Smith No. 2-8C5 well during the test period and thereafter shall be credited as an offset against the non consenting owner's proportionate share of the cost of drilling and completing said well until such time as the operator shall have recouped S. H. Bennion's said share of such costs.

(6) By Order No. 139-18 of this Board dated January 24, 1980 said spacing unit was pooled for the development and operation thereof for the protection of correlative rights. The provisions of Section 40-6-6, Utah Code Annotated, 1953 and specifically subsections (g), (1) and (2), as said statutory provisions relate to the recoupment of costs by the operator from S. H. Bennion's owner's share of such production, shall apply and Gulf Oil Corporation, as operator, shall have the right to recoup its costs advanced from the account of S. H. Bennion in the percentages so provided.

(7) At such time as S. H. Bennion's proportionate share of the drilling, completing and production costs for the Albert Smith No. 2-8C5 well are so recouped by the operator, from and out of production derived from said well, S. H. Bennion shall be entitled to take his proportionate share of production in kind, subject to the provisions of said Order of this Board No. 139-18 of January 24, 1980. Subject to the same conditions, S. H. Bennion shall be entitled to take his proportionate share of natural gas products produced from said well, provided, however, that S. H. Bennion provide the necessary facilities for the taking of said natural gas products in kind and does not cause the operator any additional cost in equipment or otherwise in accomodating such taking.

(8) S. H. Bennion is entitled to receive and Gulf shall tender a 1/8th cost-free royalty in kind beginning with the first production of said Albert Smith No. 2-8C5 well.

(9) This Order is re-affirmed and shall be retroactive to the 30th day of April, 1981, however, for the purposes of an appeal, this Order is not entered until October 22, 1981.

SO ORDERED THIS 22ND DAY OF OCTOBER, 1981.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

Charles R. Henderson, Chairman

Herm Olsen

Herm Olsen, Presiding Chairman

John L. Bell

Margaret R. Bird

E. Steele McIntyre

Robert R. Norman

Robert R. Norman

I certify that this is a true
and correct copy of the Order
issued in Cause No. 139-20(B).

Marjorie L. Anderson

Marjorie L. Anderson
Secretary of the Board

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BEFORE THE BOARD OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

in and for the STATE OF UTAH

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IN THE MATTER OF THE)
APPLICATION OF S. H.)
BENNION FOR A DETERMINA-)
TION AS TO THE PRESENT)
STATUS OF THE ALBERT)
SMITH 2-8C5 WELL LOCATED)
IN SECTION 8, TOWNSHIP 3)
SOUTH, RANGE 5 WEST, USM,)
DUCHESNE COUNTY, UTAH.)

C-82-458.

CAUSE NO. 139-20(B)

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BE IT REMEMBERED that on the 30th day of April, 1981, a hearing was held before the Board of Oil, Gas & Mining in the above-entitled matter, and said hearing was taken before Athena Moore, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, holding Utah C.S.R. License No. 88, commencing at the hour of 12:00 p.m. in the Executive Conference Room, Holiday Inn, 1659 West North Temple, Salt Lake City, Utah.

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SALT LAKE COUNTY, UTAH
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H. DIXON HINDLEY CLERK
3RD DIST. COURT
BY ________ DEPUTY CLERK

owner, for that matter could be any owner, is entitled to receive a basic landowner's one-eighth cost-free royalty. And although there is not a precedent, it's typically that most folks aren't in the position that Mr. Bennion is in that they can receive their product in kind. But in researching the law and I submitted a memorandum on this point previously, there is nothing that says that that royalty has to be in cash. Clearly I think where you are dealing with constitutionally vested rights, namely the right of Mr. Bennion to receive the benefit of his property. It seems to me a better position is to establish that he has a right to receive it in kind.

I would also like to indicate that on a companion case in dealing with Mr. Bennion and Gulf, I believe that the Board's order expressly authorized him to receive his one-eighth royalty in kind on wells that have already been paid out. The Board has already addressed that issue and decided that position in our favor.

MR. CHAIRMAN: Are there any other questions? (No response)

You may proceed.

MR. GARNER: My name is Hugh Garner,

and I'm speaking here on behalf of Gulf Oil Corporation. Mr. Stirba's letter that precipitated this hearing was dated March 17, 1981, and it was addressed to Mr. Feight. "Dear Cleon: Gulf is now producing its infill testing well in Section 8, Township 3 South, Range 5 West, Duchesne County, Utah, for more than 60 days. Accordingly, pursuant to a copy of the Board's order, a copy of which I have enclosed, please schedule a hearing on this matter for the March Board meeting."

We filed a motion basically for the purpose of having the Albert Smith No. 2 well designated as a spacing unit well. Mr. Stirba continues in his letter, quoting: "It is also my understanding that the test well in Section 19, Range 3 South, Township 5 West, in Duchesne County, Utah, has also been producing for more than 60 days and I would suggest that both these matters be heard at the same time." And I believe that is the Voda No. 2 Well has also been producing for more than 60 days. The notice of hearing addressed only the Albert Smith No. 2 Well, but no mention is made of the Josephine Voda Well, but we are prepared to address that question and satisfy the Board on the testing and producing record of both wells.

Let me call as my first witness, Mr. Anthony. Will you stand to be sworn, please?

MR. CHAIRMAN: Before you get into that, did you say the Voda Well?

MR. GARNER: Voda, V-o-d-a.

MARK ANTHONY,

called as a witness by and on behalf of Gulf Oil, being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GARNER:

Q Mr. Anthony, will you state your full name, place of residence and place of employment?

A Mark J. Anthony, and I am presently residing in Casper, Wyoming, and am employed by Gulf Oil.

Q Have you testified before this Board before?

A No, I have not.

Q I'm not going to qualify this gentleman has an expert witness. He will be merely talking from the records that I would like to qualify for the Board as a person qualified to speak.

MR. CHAIRMAN: That will be fine.

Q (By Mr. Garner) Would you give us your educational background, please?

A Yes, I have a Chemical Engineering Degree from the University of Oklahoma, and I went to work for Gulf up on my graduation at that time and with the exception of about five years in the military, I have been with Gulf all that time.

Q In what capacity have you worked for Gulf?

A As a petroleum engineer.

Q Are you familiar with this particular area?

A Yes, I am.

Q What we are discussing today in Duschesne County?

A Yes.

Q Are you familiar with the company records that provide us with productive data as to these particular wells?

A Yes, I am.

Q I want to read into the record a letter which is from Mr. Minder of this Division authorizing the drilling of this particular infill well. It's addressed to Gulf Oil Corporation. It's dated August 25, 1980. Quoting, "Insofar as this office is concerned, approval to drill the above-referred to oil and gas wells--" and I think that's a mistype-- "as infill test wells are hereby granted. However, these wells are approved as a 60-day test well, and at no time may these wells in the Albert Smith No., 18C5, located in the same section, be produced simultaneously after the 60 day testing period. Unless otherwise authorized by the Board of Oil, Gas and Mining, production will be limited to the Albert Smith No. 18C5 Wells after the approved testing period." That's basically what we are concerned with. The rest of it is just procedural with respect to filing all the forms and so on.

Getting back to you, Mr. Anthony, we are talking about the Albert Smith No. 2 Well.

Will you state to the Board the spud date of that well?

A It was spudded on September 2, 1980.

Q Is it correct to say that the notice of intention to drill which was approved by the Oil and Gas Board was dated August 25, 1980?

A Yes, sir.

Q The well is drilled and we are down to the point of doing some production. When was the first productive set of perforations made in this well?

A The determination of the productive intervals was on February 5 of 1981. Their perforated interval was from 9,852 feet to 58 feet, six foot interval. Ninety-eight seventy to eighty, and 9,886 to 90. And the first productive test was, of course, February 5, of 1981 which produced 512 barrels of oil, zero water.

MR. CHAIRMAN: What was that date?

THE WITNESS: February 5 of '81.

Q (By Mr. Garner) Give us the production, please.

A It produced 512 barrels of oil and zero barrels of water and 656 mcf of gas on a 15/64 inch choke, tubing pressure 1,300 psi.

Q Now, is this based on a 24-hour test?

A Yes, sir.

Q So we take as the first production date of this well for testing purposes, February 5 of 1981, is that correct?

A Yes, sir.

Q Will you state to the Board when the Albert Smith No. 1 well was shut in?

A We closed in the No. 1 on March 10, 1981.

Q Has there been any production from that well at any time subsequent to March 10, 1981?

A No, sir.

Q And what was the well making at that date?

A At that time it was making from 18 to 20 barrels of oil and possibly 280 barrels of water.

Q Is that on a per day rate.

A Yes.

Q Therefore, can you state unequivocally to the Board that we did not produce the two wells in excess of the 60-day test period?

A Yes, we can say that.

Q And we can also state the No. 1 well was shut in and will not be produced until further order of this Board?

A That is correct.

MR. GARNER: Are there any questions on that score?

MR. CHAIRMAN: I guess not. Proceed.

Q (By Mr. Garner) Let's address the Joseph Voda No. 1 Well and the No. 2 Well.

What is the date of the authority from this Division to granting the company the right to drill this No. 2 infill well?

A December 1st of 1980.

Q Can you give us the date it was spudded?

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A Yes, on December 13th of '80.

Q Can you give the date of completion?

A Okay.

Q The date of completion for testing purposes?

A March 12, 1981 we started testing our first set of perforated intervals.

Q And what were those intervals?

A We perforated from 9,270 feet to 80 feet; 9,252 to 56; 9228 to 34; 9,190 to 9,204; 9,110 to 28.

Q What was the production data?

A The tubing pressure was 55 psi. It flowed on a 24-hour test; zero water and zero oil and 599 mcf of gas.

Q Referring to April 4, 1981, what further testing procedure were initiated?

A On that particular date we squeezed off the perforations, the above-mentioned perforations and drilled out the cement to 9,365 feet. At that time we broke out the bottom and circulated on down to approximately 10,000 feet. And on 4-12-81, we perforated the intervals 9,860 to 76, and--

MR. CHAIRMAN: --could you give us that again?

A Yes. 9,860 to 76. On the 13th of April flowed zero oil, two barrels of water and on the 14th we started swabbing the well and recovered 77 barrels of water, zero oil. On the 15th we swabbed and had 162 barrels of water, zero oil, and mostly this water is load water from the treatment we did for the perforations to open them up.

On the 17th of March we swabbed 8 barrels of water and zero oil. At that particular time on the 17th we set a cast iron bridge plug at 9,840. We put two sacks of cement on top of it to close off those lower perforations. We then perforated on the 21st of April from 9,585 to 90; 9,621 to 25; 9,698 to 9,701; 9,704 to 07; 9,728 to 32; 9,748 to 52. We swabbed the well at 60 barrels of oil, 30 barrels of water, tubing pressure of 100 psi, and that was an 11 hour test.

Q I want to re-emphasize for the Board's information; the first testing was conducted in this No. 2 well on March 12, 1981, is that correct?

A Yes.

Q Can you give us the current production for the first 10 day of the month of April for the Voda No. 1 Well?

A The Voda No. 1 for the first 10 days in

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April averaged 10 barrels of oil and 12 barrels of water per day.

Q That's per day?

A Yes.

MR. GARNER: That's all I have of this witness except I would like to address a question of the Board. It's not clear from the letters of authorization as to when the 60 day period does run. It's obvious to the Board that it did not exceed the 60-day testing period or production period of both wells; both the Albert Smith and the Voda wells. But I am curious about the Board's interpretation of its own authorization. In a case such as the Voda Well, we're getting no production, but we received 60 barrels of oil on an 11-hour test on the 21st of April.

Are we talking about production testing of commercial production or are we talking about trying to bring a well on where there is no commercial production at all. It's just a pure test. I don't know what the language of the Division's letter means in that sense.

MR. CHAIRMAN: I'm not sure if it's fair for you to ask us.

MR. GARNER: It is helpful to us to

have that determination, then we are not going to have these kinds of assertions by Mr. Stirba that we were exceeding something when, in fact, we were not exceeding any 60 day period at all. It would be helpful for us to know just exactly where our parameters are. Mr. Minder is the author of the letter, maybe he can give us some help.

MR. MINDER: I prefer Jack speak on that.

MR. FEIGHT: Our interpretation would be that we are concerned with always the protection of correlative rights. If you are swabbing water, obviously you're not taking oil from somebody. What we are saying, if you're getting water, you are not violating the correlative rights of the other party. Our idea of a test period would be 60 days of actual testing which you actually produced oil. If you shut down for a week or two weeks to perforate, and set a cast iron plug or something like this, we would not consider that in the testing period. We are talking about 60 days of actually testing the well. We view that because we have the same problem relative to when we let a well produce and flare gas for a 60-day test period. It's the gas we are trying to conserve. It doesn't start from April 1st to March

15 or something like that and stop. May 14 or June 14 or whatever.

MR. GARNER: To continue that line of reasoning, from April 21st forward, it probably would be the beginning of a measured period of 60 days. That's the first time oil is produced.

MR. FEIGHT: That's what we would consider as the staff. This has never been interpreted by a court and never had any rulings. In fact, we never had any rulings on the Oil and Gas Conservation Act in Utah.

MR. GARNER: The issue is moot as of this moment because we shut in the Albert No. 1. That is not being produced and will not be produced until this Board so orders. But we don't know about the Voda Well and what's going to happen on it. It might be something the Board would like to consider under this situation. We're not talking about detailed engineer reservoir characteristics. We're talking about the fact that the well has been swabbed and has been perforated. No well has been produced for any amount of time. There has been no production.

MR. CHAIRMAN: Are you continuing to work on the well?

MR. ANTHONY: Yes. Of course, right now we have found commercial production, so we are on a daily production test basis at this time. Since the last date, I think it was April. The first production test was on April 21, I believe, with commercial oil.

MR. CHAIRMAN: How much was that producing on; have you been producing since that time? We know so little about this well that we have to ask you.

MR. ANTHONY: I don't know what it has made since that time.

MR. GARNER: The last time was the 21st.

MR. ANTHONY: Yes. The last date I have is the 21st.

MR. CHAIRMAN: You don't know how much it is producing.

MR. ANTHONY: No, not at this particular time.

MR. CHAIRMAN: You don't even know if it is going to be a commercial well?

MR. ANTHONY: No, we don't know that. The only thing we do know is that it was making approximately 60 barrels of oil. We have no idea of what the extent of the reservoir is. We can't know that at this time. We realize that this whole field is--apparently the reservoir due to the geological structure of the thing--it's almost impossible to determine what's going to happen from one well to the next as far as correlating sands and production.

MR. STIRBA: May I ask a few questions of the witness at this time, or do you want to wait until after lunch?

MR. CHAIRMAN: I think we'd better wait until after lunch.

MR. STIRBA: These gentlemen have a tentative reservation on a 1 o'clock flight. I don't have much more to go on with respect to this.

MR. CHAIRMAN: How long will it take?

MR. GARNER: Mr. Stirba is going to be the judge of how long it is going to take.

MR. STIRBA: I don't want to make much to do about nothing, Mr. Chairman. But there is evidence that I have that that well is producing as of January 12 which was pursuant to the records that Gulf sent Mr. Bennion. Additionally, there are state reports that indicate that that well was producing in January and in February and in March.

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

S. H. BENNION, Plaintiff, v. GULF OIL CORPORATION, a Pennsylvania corporation, and the UTAH STATE BOARD OF OIL, GAS AND MINING, an Agency of the State of Utah, Defendants.	AFFIDAVIT OF STEPHEN W. RUPP Civil No. C-82-458

State of Utah)
County of Salt Lake) ss.

STEPHEN W. RUPP, being first duly sworn upon oath deposes and says:

1) I am the attorney for Plaintiff.

2) Attached hereto are certified, true and correct copies of documents on file with the Division of Oil, Gas and Mining, namely:

a) Order in Cause No. 139-8 dated Spet. 20, 1972

b) Emergency Order and Order to Show Cause in Cause No. 139-20 dated October 3, 1980

c) Amended Order in Cause No. 139-20(B) dated Oct. 22, 1981

d-e) Annual Monthly Production Reports of Albert Smith 1-8C5 well for the years 1980 and 1981

f) Annual Monthly Production Report of Albert Smith 2-8C5 well for the year 1981 g-o) Monthly Reports of Operation and Well Status Reports for Albert Smith 2-8C5 well for the months January through September, 1982.

p) Motion of Gulf Oil of approximately April 16, 1981 in Cause No. 139-20(B).

Dated this 31 day of December, 1982.

Stephen W. Rupp

PETER STIRBA

Subscribed and sworn to before me this 31st day of December, 1982.

Notary Public

My Commission expires:
11/3/85

Residing at:
SLC, Utah

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Affidavit and attachments was hand delivered this 31st day of December, 1982 to Hugh C. Garner, 310 S. Main, #1400, Salt Lake City, Utah 84101, and Barbara Roberts, Room 115 State Capit Building, Salt Lake City, Utah 84111.

SEC. 8 T. 3S R. 5W QTR/QTR SE/NE (SE/SE) [✓ OIL] GAS PRODUCTION FORMATION

PLACED ON PRODUCTION 10/18/73 COMPLETION DATE 4/25/74 P&A

C.P. 4/81

MONTH	CARD NO.	DAYS	164,450 OIL-BBLS.	294,814 GAS-MCF.	245,434 WATER-BBLS.	PRODUC- ind	ible	CARD CODE	GAS DISPOSITION sold	use	flared
JANUARY	F0215	30	726 24.2	736	9,511 317 pd	/	/	/	736 Gr 0 Con	347/0 Res. Pld	-0-
FEBRUARY	↓	28	732 26.8 pd	1,993	8,340 297.8	↓	↓	↓	1993 Gr 685 Con	363/33 Res. Pld	
MARCH	↓	7	137 16.4 pd	567	2,492 365.7	↓	↓	↓	567 Gr. 231 Con	34/5 Res. Pld	
APRIL	↓		Closed in 3/10/81			/	/	A			
MAY	↓					↓	↓	↓			
JUNE	↓					↓	↓	↓			
JULY	↓					↓	↓	↓			
AUGUST	↓					/	/	A			
SEPTEMBER	↓					/	/	A			
OCTOBER	↓					/	/	A			
NOVEMBER	↓					/	/	A			
DECEMBER	↓	-0-	-0-	-0-	-0-	/	/	A			
TOTAL											

PRODUCTION 1981

Smith 1-8C5

WELL/LEASE Albert Smith #1-8C5
Fee

OPERATOR Gulf Oil ~~Corporation~~
API-43-013-30142

FIELD Altamont
Duchesne Co.

SEC. 8 . 3S R. 5W QTR/QTR NE/SW OIL —GAS PRODUCTION FORMATION

PLACED ON PRODUCTION 2/4/81 COMPLETION DATE 2/5/81 P&A

cum as of Jan. 1981

MONTH	CARD NO.	DAYS	4,312 OIL-BBLS.	3,352 GAS-MCF.	600 WATER-BBLS.	PRODUC- ind	ible	CARD CODE	GAS DISPOSITION sold	use	flared
JANUARY	F0709	18	4,131	3,312	600	/	/	/	3,312 Gr. 1,074 Con	535/85 Res Rtd	
FEBRUARY		28	11,926	13,625	0				13625 Gr. 2160 Con	1,421/302 Res Rtd	
MARCH		31	8,620	22,285	317				22285 Gr. 549 Con	1318/1177 Res Rtd	
APRIL		30	2,877	25,170	1,165				25170 Gr. 2488 Con	96/290 Res Rtd	
MAY		25	1,207	10,723	1,025				10723 Gr. 4255 Con	298/721 Res Rtd	
JUNE		25	1,377	1,230	713				1180 Gr. 339 Con	217/31 Res Rtd	
JULY		31	937	1,208	750				1208 Gr. 406 Con	164/22	
AUGUST		31	450	1,157	813				1157 Gr. 430 Con	152/12 Res Rtd	
SEPTEMBER		22	927	613	1698				613 GR 104 CoRR	176/3 Res Rtd	
OCTOBER		29	1425	1225	1211				1228 Gr 253 CoRR	326/18 Res Rtd	
NOVEMBER		27	888	96	1539				96 GR 0 CoRR	52/0 Res Rtd	
DECEMBER		21	511 MAP 5111	179	1345						
TOTAL											

PRODUCTION 1981

2-8C5

WELL/LEASE Smith #2-8C5
(PL) U-21633 OPERATOR Gulf Oil ~~Corporation~~ API-43-013-30543 FIELD Undesignated Duchesne Co.

IN THE SUPREME COURT OF THE STATE OF UTAH

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S. H. Bennion,
Plaintiff and Appellant,

No. 19144

v.

Gulf Oil Corporation, a Pennsylvania
Corporation and the Utah State Board
of Oil, Gas & Mining, an agency of
the State of Utah,
Defendants and Respondents.

FILED
August 19, 1985

Geoffrey J. Butler, Clerk

HOWE, Justice:

Appellant S. H. Bennion appeals from a summary judgment granted in favor of respondents Gulf Oil Corporation and the Utah State Board of Oil, Gas, and Mining. He seeks reversal of the judgment and contends that summary judgment in his favor should have been granted.

Bennion holds mineral interests which without his consent were made part of an oil drilling unit designated by the Board, as permitted by the Oil and Gas Conservation Act, U.C.A., 1953, §§ 40-6-1 to -19 (1981). By a 1972 order of the Board, Gulf was the producer authorized to drill the single production well allowed on the 640-acre unit. As a nonconsenting interest owner, Bennion was entitled under the act to his proportionate share of the oil and gas produced from the unit minus his proportionate share of the cost of drilling, production, and maintenance.

Gulf drilled a producing well on the 640-acre unit and recouped its drilling costs. Bennion was thus entitled to receive and in fact was receiving his proportionate share of the oil and gas produced on the unit minus the relatively low cost of production and maintenance. Without notice or hearing, but with permission given by a staff engineer of the Division of Oil, Gas, and Mining on August 25, 1980, Gulf commenced drilling a second well as an infill test well within the 640-acre unit. Bennion petitioned the Board to enjoin the drilling on the basis that a second well was in violation of the Oil and Gas Conservation Act and the Board's prior unitization order. The Board determined that the drilling of a second well as a test well was not in violation of its prior order and that, inasmuch as it was a test well, Bennion was not required to pay any of its drilling costs. However, the Board added that if it were to redesignate the test well as a production well, Bennion would then be responsible for his proportionate share of those costs. Subsequently, Gulf "shut in" the first well and applied to have the second well designated as the production well. After a hearing, the Board changed the designation of the second well from a test well to that of the unit's production well and ordered Bennion to pay his share of the $1.4 million drilling cost. Bennion appealed the Board's order to the district court.

Pursuant to U.C.A., 1953, § 40-6-10(b), appellant was entitled on his appeal to a determination of the "issues on both questions of law and fact" by the district court. On the parties' cross-motions for summary judgment, the court determined from the transcript of the hearing before the Board that the Board had acted properly and within its authority. Summary judgment in favor of Gulf was entered.

For purposes of this opinion, we shall assume that the Oil and Gas Conservation Act allows a staff engineer to authorize the drilling of a test well on a producing unit. We note that the issue is raised, but not argued, in the briefs of counsel and that the act is not clear on the issue. See U.C.A., 1953, § 40-6-3. However, even assuming that the statute allows such a delegation of authority, we cannot agree with the district court's affirmance of the Board's order redesignating the test well as the production well and holding Bennion responsible for a proportionate share of the cost of drilling the second well.

Although the Oil and Gas Conservation Act was first enacted in 1955, we have had little opportunity to construe its provisions. A cursory reading of the act discloses, however, that in at least two places it is contemplated that only one well should be drilled per unit. For example, section 40-6-6(b) provides:

> In establishing a drilling unit, the acreage to be embraced within each unit and the shape thereof shall be determined by the board from the evidence introduced at the hearing but shall not be smaller nor greater than the maximum area that can be efficiently and economically drained by one well.

(Emphasis added.) Subsection (c) provides:

> Subject to the provisions of this act, the order establishing drilling units shall direct that no more than one well shall be drilled for production from the common source of supply on any unit . . . .

(Emphasis added.) We find nothing in the act which expressly allows a test well to displace the production well from a common source of supply on the unit. The only reference to the drilling of additional wells is found in subsection (d) where it is provided:

> When found necessary for the prevention of waste, or to avoid the drilling of unnecessary wells, or to protect correlative rights, an order establishing drilling units in a pool may be modified by the board to increase the size of drilling units in the pool or any zone thereof, to decrease the size of drilling units or to permit the drilling of additional wells on a reasonably uniform plan in the pool, or any zone thereof.

The Board's order in the instant case did not purport to comply with this subsection. The order did not authorize the drilling of additional wells on a uniform plan "in the pool or any zone thereof."

The Board made its order approving the second well as the production well for the unit and charging Bennion for his proportionate share of the cost of drilling in reliance on section 40-6-1, which is entitled "Declaration of Public Interest:"

> It is declared to be in the public interest to foster, encourage, and promote the development, production, and utilization of natural resources of oil and gas in the state of Utah in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be obtained and that the correlative rights of all owners be fully protected; to encourage, authorize, and provide for voluntary agreements for cycling, recycling, pressure maintenance, and secondary recovery operations in order that the greatest possible economic recovery of oil and gas may be obtained within the state to the end that the land owners, the royalty owners, the producers, and the general public may realize and enjoy the greatest possible good from these vital natural resources.

The Board further justified its action on its finding that the first well at the time it was shut in was at the point of marginal recovery of further oil or gas or both of them. At the hearing before the Board, Gulf introduced production reports of the second well for the first three months of its operation which showed higher production than the first well. However, Gulf did not know if the second well would be a commercial well or even if its total production would exceed that which would still be produced by the first well. Gulf's expert witness testified:

> We have no idea of what the extent of the reservoir is. We can't know that at this time. We realize that this whole field is--apparently the reservoir due to the geological structure of the thing--it's almost impossible to determine what's going to happen from one well to the next as far as correlating sands and production.

We acknowledge the legislative mandate in section 40-6-1 to promote the development of our state's oil and gas resources. We do not believe, however, that the broad declaration of public interest contained therein was meant to override the specific statutory restrictions on the drilling of an additional well on any unit.[1] Moreover, we note that the declaration of public interest calls for "the greatest possible economic recovery of oil and gas," which provides the basis for Bennion's complaint that the evidence is lacking as to whether the second well will ever pay out. We also note the legislative intent expressed in section 40-6-6(a) that the drilling of unnecessary wells be avoided. Thus, aside from the fact that there does not appear to be any statutory authority for the action of the Board, the evidence was insufficient to demonstrate that it was more equitable or reasonable to shut in the first well and redesignate the second well as the production well. More importantly, the evidence fails to justify the trampling of a nonconsenting mineral interest owner's correlative rights in charging him with the added and speculative expense of drilling the second well.

We have examined Gulf's res judicata defense and find it to be without merit.

The Board erred in its redesignation of the second well as the production well for the unit, and the district court erred in affirming the Board's order. We vacate the Board's order in cause number 139-20(B) and remand the cause to the Board with the instruction to enter an order that the second well is and has been producing in violation of U.C.A., 1953, § 40-6-6(e) and relieve Bennion of all obligation to share in the cost of drilling.

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[1] In 1983, two years after the hearing before the Board in the instant case, extensive amendments were made to the Oil and Gas Conservation Act. Properly, we have not considered them in our analysis and decision.

WE CONCUR:

Gordon R. Hall, Chief Justice

Christine M. Durham, Justice

Michael D. Zimmerman, Justice

Stewart, Justice, concurs in the result.